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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/028,516   | 12/20/2001  | Gordon Kessler       | Kess-01             | 4502             |
| 7590   | 03/10/2005  |                      | EXAMINER            |                  |
| Gordon Kessler<br>59 Fox Den Road<br>Mt. Kisco, NY 10549 |             |                      | DENNISON, JERRY B   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2143                |                  |

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | Application No.<br>10/028,516 | Applicant(s)<br>KESSLER, GORDON |
|------------------------------|-------------------------------|---------------------------------|
| Examiner                     | Art Unit<br>J. Bret Dennison  | 2143                            |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## ***Office Action Summary***

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 December 2001.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-20 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 20 December 2001 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## DETAILED ACTION

1. This Action is in response to Application Number 10/028,516 received on 20 December 2001.
2. Claims 1-20 are presented for examination.

### ***Claim Objections***

3. Claims 2 and 7 are objected to because of the following informalities: Claims 2 and 7 recite the limitation "linger". Examiner will interpret the limitation as "longer". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Sato et al. (U.S. Patent Application Publication Number 2003/0114968).

4. Regarding claims 1, 16, and 19 Sato discloses method for downloading audio data; comprising the steps of:

providing user preference data indicating one or more topics of interest to a user, and a relative ranking between these topics (Sato, Fig. 3, paragraphs 40, 45, and 80);

providing user designated time span data indicative of a desired time for listening to an audio program (Sato, Paragraph 9);

forwarding said user preference data and said user designated time span data to a storage device (Sato, paragraph 10);

retrieving a plurality of audio data corresponding to said user preference data (Sato, paragraph 10);

determining a length of time required to playback said audio data (Sato, paragraphs 10 and 79);

determining whether said length of time required to playback said audio data is longer than said user designated time span (Sato, paragraphs 10 and 79);

reducing the length of at least one of said plurality of audio data if it is determined that said length of time required to playback said audio data is longer than said user designated time span (Sato, paragraph 79); and

outputting said audio data including said one of said plurality of audio data reduced in length (Sato, paragraph 87).

Claim 16 includes a method with limitations similar to the limitations of claim 1. Claim 19 includes a base unit with the same functionality as claim 1. Claims 1, 16, and 19 are therefore rejected under the same prior art as being substantially similar to claims.

Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Zimmerman et al. (U.S. Patent Application Publication 2003/0063407).

5. Regarding claims 1, 16, and 19, Zimmerman discloses a method for downloading audio data (Zimmerman, paragraph 28) comprising the steps of:

providing user preference data indicating one or more topics of interest to a user, and a relative ranking between these topics (Zimmerman, paragraphs 35 and 58, Zimmerman discloses a user setting preference data including priority);

providing user designated time span data indicative of a desired time for listening to an audio program (Zimmerman, paragraph 37 and Abstract, Zimmerman discloses the user being able to input the amount of time the user has to view/listen to audio-video segments);

forwarding said user preference data and said user designated time span data to a storage device (Zimmerman, paragraph 34, Zimmerman discloses a hard disk drive to include any mass storage device. Zimmerman also discloses external mass storage devices the video playback device may access and control via a network connection);

retrieving a plurality of audio data corresponding to said user preference data (Zimmerman, paragraph 35);

determining a length of time required to playback said audio data (Zimmerman, paragraph 37);

determining whether said length of time required to playback said audio data is longer than said user designated time span, reducing the length of at least one of said plurality of audio data if it is determined that said length of time required to playback said audio data is longer than said user designated time span and outputting said audio data including said one of said plurality of audio data reduced in length (Zimmerman, paragraphs 35 and 37, Zimmerman discloses the user setting a threshold for the video/audio segments, and the video playback device determining which segments are above the threshold and plays them based on priority values given by the user. Segments are chosen according to their priority level and a viewer-determined playback time period. Rather than playing the complete content, the playback controller reduces the number of segments based on user priority and the user time span).

Claim 16 includes a method with limitations similar to the limitations of claim 1. Claim 19 includes a base unit with the same functionality as claim 1. Claims 1, 16, and 19 are therefore rejected under the same prior art as being substantially similar to claims.

6. Regarding claims 2 and 7, Zimmerman discloses wherein the determination of said length of time required to playback said audio data, the determination of whether said length of time required to playback said audio data is longer than said user designated time span, and the reducing the length of at least one of said plurality of audio data are repeated, each time reducing the length of a different one of said plurality of audio data until it is determined that said length of time required to playback said audio data is not longer than said user designated time span (Zimmerman,

paragraphs 35-37, Zimmerman teaches repeatedly choosing segments based on the user preferences).

7. Regarding claim 3, Zimmerman discloses the limitations, substantially as claimed, as described in claim 1, including wherein said audio data comprises news programs (Zimmerman, paragraph 64).

8.

9. Regarding claim 4, Zimmerman discloses the limitations, substantially as claimed, as described in claim 1, including wherein at least one of said plurality of said audio data comprises an advertisement (Zimmerman, paragraph 44).

10. Regarding claims 5, 8, 9, and 10, Zimmerman discloses the limitations, substantially as claimed, as described in claims 1 and 7, including wherein the length of said at least one of said audio data is reduced by substituting a summary audio data for said audio data (Zimmerman, paragraph 44, Zimmerman discloses the summary of video/audio data can be any segment of any content, for example parts of a show).

11. Regarding claim 6, Zimmerman discloses the limitations, substantially as claimed, as described in claim 1, including wherein the length of said at least one of said audio data is reduced by substituting a title audio data for said audio data (Zimmerman, paragraph 44).

12. Regarding claim 11, Zimmerman discloses the limitations, substantially as claimed, as described in claim 1, including wherein said relative ranking between topics includes placing the topics in a continuous order from most to least, or least to most desirable (Zimmerman, paragraph 58, Zimmerman teaches the viewer being able to modify priority values of segments to personalize them, wherein priority qualifies as order).

13. Regarding claim 12, Zimmerman discloses the limitations, substantially as claimed, as described in claim 1, including wherein said relative ranking between topics includes placing each of the topics in one of a plurality of categories, the categories indicating a relative preference between the topics contained therein (Zimmerman, paragraph 60, Zimmerman teaches segment priority hierarchies).

14. Regarding claims 13-15, Zimmerman discloses the limitations, substantially as claimed, as described in claim 1, including wherein said relative ranking between topics includes indicating whether an audio program corresponding to each topic is eligible to be reduced in length (Zimmerman, paragraph 66, Zimmerman discloses priority hierarchy files containing data telling video playback device which segments to play back, depending on the amount of playback time specified by the user).

15. Regarding claim 17, Zimmerman discloses the limitations, substantially as claimed, as described in claim 16, including wherein said plurality of audio data is selected in accordance with one or more user preferences (Zimmerman, paragraph 58).

16. Regarding claim 18, Zimmerman discloses the limitations, substantially as claimed, as described in claim 16, including wherein said designated time span is designated by a user (Zimmerman, paragraph 37).

17. Regarding claim 20, Zimmerman discloses the limitations, substantially as claimed, as described in claim 19, including wherein said received audio data is output to a remote device (Zimmerman, paragraph 28).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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